

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

SHAWN PAVEL,

Plaintiff,

v.

**CIVIL ACTION NO. 3:08-CV-117
(BAILEY)**

MICHAEL J. ASTRUE,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on February 26, 2009 [Doc. 21]. In the R&R, the magistrate judge recommended that this Court grant defendant's Motion to Dismiss for Lack of Jurisdiction [Doc. 16] and deny plaintiff's Motion for Appointment of Counsel [Doc. 19].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's Amended R&R were due within ten (10) days of receipt of the Amended R&R. The docket shows Mr. Pavel accepted service of the R&R on March 5, 2009. Neither party filed objections to the R&R. Accordingly, this Court will review the report and recommendation for clear error.

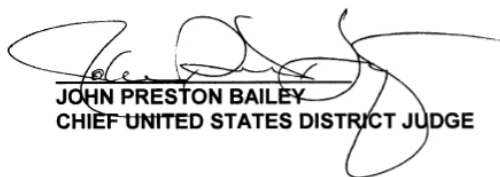
Upon careful review of the Amended R&R, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation [**Doc. 21**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **ORDERS as follows**:

1. Defendant's Motion to Dismiss for Lack of Jurisdiction [Doc. 16] is hereby **GRANTED**;
2. Plaintiff's Motion for Appointment of Counsel [Doc. 19] is hereby **DENIED**; and
3. Plaintiff's Complaint [Doc. 1] is hereby **DISMISSED** and **ORDERED stricken** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to mail a copy to the *pro se* plaintiff.

DATED: May 7, 2009


JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE